

Indiana Department of Administration MBE/WBE and IVOSB Participation Policy for INDOT Construction Projects

I. Introduction

The Indiana Department of Administration (“IDOA”) and Indiana Department of Transportation (“INDOT”) in its commitment to Minority and Women’s Business Enterprise (“MBE/WBE”) and Indiana Veteran Owned Small Business (“IVOSB”) participation in the state’s procurement and contracting process, expects prime contractors to solicit MBE, WBE, and IVOSB subcontractors for competitive bids in the areas of construction, professional services, and goods and services. This policy outlines the steps necessary for subcontractor participation that is subject to IDOA purchasing authority.

II. Definitions

“Certification for MBE, WBE, and IVOSB” means certification by the Indiana Department of Administration, Division of Supplier Diversity (“DSD”).

“Commercially useful function” (not to be confused with Valuable Scope Contribution (VSC) as defined by IDOA procurement policy located at <https://www.in.gov/idoa/3106.htm>) means a business’s reasonable prospects for success in the public sector by its demonstrated historical capability to perform, manage, and supervise the work for which it has sought certification.

“Contractor” means any entity or person who does business with the State and is registered as same.

“Credit” means MBE, WBE, and IVOSB credit and post-award credit for purchases from a supplier or a broker shall not be greater than sixty percent (60%) of the total subcontractor participation plan goal. MBE, WBE, and IVOSB credit and post-award credit for purchases from a broker shall not be greater than five percent (5%) of the total subcontractor participation plan goal.

“Department” means Indiana Department of Administration

“Division of Supplier Diversity (DSD or Division)” means the Division which acts on behalf of the State to actively promote, monitor, and enforce the MBE/WBE and IVOSB programs. DSD is the final authority on all matters pertaining to the maintenance and administration of the MBE/WBE and IVOSB programs and compliance thereto.

“Indiana Veteran Owned Small Business Enterprise (IVOSB)” means an Indiana business which is certified as at least fifty-one percent (51%) owned and controlled by a veteran.

“Letter of Commitment” means a letter obtained from the MBE, WBE, and IVOSB by the Respondents. The Letter of Commitment is a signed letter(s), on company letterhead, from the minority, women’s and/or Indiana veteran owned certified business. This letter(s) shall state and will serve as acknowledgement from the minority, women and/or Indiana veteran owned certified business of their level of participation in this solicitation, the dollar amount of the commitment, the scope of service or product to be provided and the anticipated dates of utilization.

“Minority Business Enterprise (MBE) and Women’s Business Enterprise (WBE)” means a business concern which is certified as at least fifty-one percent (51%) owned and controlled by a woman or women or one or more of the individuals classified as a minority group which includes: African Americans,

Hispanic Americans, Asian Americans, American Indians and other racial minorities. The MBE and WBE must meet the eligibility requirements of 25 IAC 5.

“Subcontractor Participation Plan (Plan)” means the IDOA prescribed document that sets forth the MBE, WBE, and IVOSB subcontractors that will perform work under the contract.

“Respondent” means an offeror as identified in IC 5-22-2-18.

“Subcontractor” means any person having a contract with a contractor to directly furnish labor, services, supplies, or materials used in the actual performance of a state contract.

III. Minority and Women Business Enterprise Certification

MBEs and WBEs must be listed on the IDOA directory of certified firms at the time the solicitation response is submitted to be eligible to meet the contract goals (<https://www.in.gov/idoa/mwbe/2743.htm>). The respondent should verify that a firm is certified before the solicitation response is submitted.

Questions regarding certification should be addressed to the following:

Indiana Department of Administration
Division of Supplier Diversity
402 West Washington Street, Room W462
Indianapolis, IN 46204
(317) 232-3061
mwbe@idoa.in.gov

IV. Indiana Veteran Owned Small Business Enterprise Certification

IVOSBs must be listed on the IDOA directory of certified firms at the time the solicitation response is submitted to be eligible to meet the contract goals (<https://www.in.gov/idoa/3067.htm>). Federally certified veterans are also eligible to meet contract goals (<https://www.vip.vetbiz.va.gov/>) provided that they meet the requirements of the IVOSB program. The respondent should verify that a firm is certified before the solicitation response is submitted.

Questions regarding certification should be addressed to the following:

Indiana Department of Administration
Division of Supplier Diversity
402 W. Washington St., Room W462
Indianapolis, IN 46204
(317) 232-3061
Indianaveteranspreference@idoa.in.gov

V. Bidding Process

IDOA will review solicitations for viable subcontracting opportunities. All solicitations will be governed by this policy unless otherwise stated.

A representative from DSD may attend pre-proposal and pre-bid meetings to discuss and answer questions related to the MBE, WBE, and IVOSB participation goals. The DSD may be available to assist respondents in locating MBE, WBE, or IVOSB firms to engage in the contract. State agencies are also expected to make respondents aware of MBE, WBE, and IVOSB goals and utilization goals.

The following procedures will be implemented in the acceptance and evaluation of responsive and responsible solicitations:

1. Respondents are expected to submit a Plan, on the approved form, listing the utilization of MBE, WBE, and IVOSB subcontractors that will be providing a commercially useful function on the project. Respondents are also expected to submit a Letter of Commitment from MBE, WBE, and IVOSB firms they plan to engage in the contract, if awarded the solicitation opportunity.
2. MBE, WBE, and IVOSBs that hold more than one certification with IDOA DSD, shall only count toward one subcontractor participation goal.
3. If an MBE or WBE firm is a respondent, such firm is subject to the same expectations of meeting MBE/WBE/IVOSB subcontract goals. An IVOSB that is a respondent can count their own workforce toward IVOSB subcontract goals; however, such firm is still expected to meet the MBE/WBE subcontract goals.

Questions regarding the above can be directed to DSD at mwbecompliance@idoa.in.gov or 317-232-3061.

DSD considers the following methods as good faith effort, but are not limited to the measures given below:

1. Attending any pre-bid meetings that were scheduled by the department to inform certified enterprises of subcontracting opportunities.
2. Providing reasonably advanced written notice to a reasonable number of certified enterprises that their interest in the contract is being solicited.
3. Following up initial solicitations of interest by contacting certified enterprises to determine with certainty they were interested.
4. Selecting portions of the work to be performed by certified enterprises to increase the likelihood of meeting the contract goals.
5. Providing interested certified enterprises with adequate information about the plans, specifications, and requirements of the contract.
6. Negotiating in good faith with interested certified enterprises and has not rejected them as unqualified without sound reasons based on a thorough investigation of their capabilities.
7. Receiving quotations from interested certified enterprises and has not rejected them as unacceptable without sound reasons why the quotations were unacceptable, or without showing that the quotations were unreasonable.
8. Making efforts to assist interested certified enterprises in obtaining any required insurance.
9. Negotiating with specific certified enterprises to assume part of the responsibility to meet the contract goals.
10. Using the division's database of certified enterprises.
11. Contacting the department for assistance in distributing the bid information or for guidance on the solicitation measures.

Respondents can contact IDOA DSD at mwbecompliance@idoa.in.gov or 317-232-3061 to aid in the solicitation of MBE/WBE/IVOSBs through the Division's advertising methods.

VI. Compliance

Once the contract has been executed, the Plan becomes an integral part of the Contract.

Contractors shall utilize all MBE, WBE, and IVOSB firms listed on the Plan at the committed participation, percentage, period of utilization, and scope of work. Copies of subcontract agreements must be submitted to DSD via email or mail within 30 days of the executed contract.

Contractors and/or state agencies shall not substitute, replace, or terminate any MBE, WBE, and IVOSB firm without prior written authorization from DSD. Contractors and/or state agencies shall not alter or modify the subcontractor participation percentage or scope of work without DSD approval.

DSD is the final approving authority for any alterations to subcontractor commitment plans. Contractors who wish to alter their Plan must submit an official change request letter to DSD, with state agency in copy, on the Contractor's letterhead. The request must include the following information:

- a. the reason(s) for the change,
- b. the name of the replacement firm(s) or additional firm(s),
- c. the scope of services to be performed by the added firm(s),
- d. and, the percentage of the contract to be spent or removed from the firm(s).
- e. In addition to the above, the Change in MBE/WBE/IVOSB Subcontractor Notification Document, signed by both the contractor and subcontractor(s), must accompany the letter. This document can be obtained by DSD.

Upon receipt of the request to change the Plan, DSD will then review all provided documentation, notify the contracting agency and interview all concerned parties regarding the possible modifications in the subcontractor participation plan. Based on the information gathered by the DSD contract compliance team, a letter of determination will be issued either approving or disapproving the contractor's request.

Contractors shall cooperate and participate in compliance reviews as determined necessary by DSD. Contractors shall provide all necessary documentation to show proof of compliance with the requirements, as requested by DSD.

Contractors shall notify DSD immediately if any firm listed on the Plan refuses to enter into a subcontractor agreement or fails to perform according to the requirements of the subcontractor agreement.

VII. Non-Compliance

When a Respondent submits an MBE/WBE/IVOSB Plan in accordance with IC 4-13-16.5, 25 IAC 5, and 25 IAC 9, the Respondent will be held to those commitments throughout the duration of the contract.

DSD performs routine audits of subcontractor utilization. If DSD determines that a Contractor is not in compliance with its Plan, DSD will notify the Contractor within ten (10) days after the initial compliance review or the site visit. DSD will identify the deficiencies found and the required corrective actions that should be taken to remedy the deficiencies.

DSD may also receive written notifications of noncompliance from Contractors and subcontractors. Complaints must provide detailed documentation surrounding the allegation(s) of noncompliance. DSD will acknowledge receipt of complaint within five (5) business days. DSD may request additional information and consult with all concerned parties regarding the allegation(s) of noncompliance.

If a Contractor is found non-compliant, the Contractor must submit, in writing, a specific commitment to correct the deficiencies. The commitment must include the precise action to be taken and the date for completion.

If DSD determines the Contractor has failed to comply with the provisions of this Participation Program, Plan, IC 4-13-16.5-8, IDOA may impose any or all the following sanctions:

- a. Withholding payment on the Contract until such time that satisfactory corrective measures are made.
- b. Adjustment to payments due or the permanent withholding of retainages of the Contract.
- c. Suspension or termination of the specific Contract in which the deficiency is known to exist. In the event this sanction is employed, the Contractor will be held liable for any consequential damages arising from the suspension or termination of the Contract, including damages caused as a result of the delay or from increased prices incurred in securing the performance of the balance of the work by other Contractors.
- d. Recommendation to the certification board to revoke the contractor's certification status with the Public Works Division of IDOA. This recommendation may result in the suspension or revocation of the contractor's ability to perform on future state contracts for a period no longer than thirty-six (36) months.
- e. Continued non-compliance may be deemed a material breach of the agreement between DSD and Contractor, whereupon DSD shall have all the rights and remedies available to it under the Contract or at law.
- f. Suspension, revocation, or denial of the MBE, WBE, or IVOSB certification and eligibility to participate in the MBE, WBE, or IVOSB program for a period of not more than thirty-six (36) months.

VIII. Forms and Attachments

Minority, Women's, and Indiana Veteran Owned Business Enterprises Participation Plan

Change in MBE/WBE/IVOSB Subcontractor Notification Document